

**UNITED STATES' MEMORANDUM IN OPPOSITION
TO DEFENDANTS QUORUM HEALTH GROUP'S AND QUORUM HEALTH
RESOURCES' MOTION FOR THE APPOINTMENT OF A MEDIATOR
PURSUANT TO CHAPTER NINE OF THE LOCAL RULES**

While the United States of America ("United States" or "the government") favors settling this action without trial, it opposes the motion filed by Quorum Health Group, Inc. and Quorum Health Resources, LLC (collectively "Quorum") requesting an order of referral to a mediator under Rules of the United States District Court for the Middle District of Florida ("Local Rules") Rule 9.01(a) as premature and needlessly complicating an already complex matter. The United States respectfully requests that the Court deny the motion without prejudice for refiling at a later date.

SUMMARY

The United States believes that mediation at this point would be premature, because it currently has insufficient information to settle this litigation. The United States is only today filing and serving its complaint on Quorum. Pending before this court is a motion to sever certain claims from this litigation. No discovery has taken place, nor has a case management order been entered. The United States has received to date almost no evidence relating to the period after 1993, the main period during which Quorum acquired hospitals. The United States is prepared to proceed with discovery, after which it believes the appointment of a mediator under Chapter 9 of the Local Rules might be appropriate. At this time, however, the United States sees no benefit to mediation because the United States lacks sufficient information about damages to settle the case. Therefore, the United States respectfully requests that the Court deny Quorum's request to refer this matter to a mediator.

BACKGROUND

Relator, James F. Alderson, filed this *qui tam* action under the False Claims Act, 31 U.S.C. § 3729 *et seq.* After this Court, on August 26, 1998, ordered that the case be unsealed on October 5, 1998, the United States chose to intervene. *See* United States' Notice of Election to Intervene, October 1, 1998. The United States filed and served its complaint on Quorum today, within the 120-day period provided for by Federal Rule of Civil Procedure 4(m).

The United States believes that this case, alleging fraudulent billings by over 400 hospitals owned or managed by two of the nation's largest chains, is one of the most complex litigations ever commenced relating to the system whereby the Health Care Financing Administration ("HCFA") funds institutional care under the Medicare system. At issue are cost reports — one of the main means through which HCFA and hospitals determine the hospitals' due — for a fourteen year period (1985-1998). The case against Quorum alone involves false claims in cost reports filed annually by 179 managed hospitals and 33 owned hospitals. The investigation initiated by the government after receipt of the relator's complaint has been extensive, involving among other things the coordination of ongoing investigations and administrative issues. To date, however, the United States has received almost no evidence concerning Quorum relating to the period after 1993.

QUORUM'S MOTION FOR APPOINTMENT OF A MEDIATOR

On January 19, 1999, Quorum filed a motion requesting appointment of a mediator pursuant to Chapter 9 of the Local Rules. The motion suffers from a fatal flaw: it is simply an

encomium to the benefits of informal settlement processes, rather than being based on the realities of this case — that at this stage in the litigation the United States does not have sufficient facts to settle the matter. The Local Rules do not envision the referral of litigation to mediation this early.¹

Chapter 9 of the Local Rules provides for court-annexed mediation. It seems clear that mediation is contemplated only after a period of discovery and case development; mediation otherwise would routinely be an exercise in futility, for one cannot settle a case without adequate information concerning another party's full liability and damages. The Local Rules acknowledge this. For example, Local Rule 9.05(d) requires each party to attend mediation with "full authority to negotiate a settlement," which is difficult to envision prior to discovery. In fact, the Local Rules suggest that the appropriate time for a mediation conference is "not sooner than 45 days and not later than 10 days before the scheduled trial date." Local Rule 9.04(a)(2). The United States has only today filed its Complaint. Quorum has yet to answer that complaint, and the parties have not yet had the opportunity to discuss the Case Management Report required pursuant to Local Rules 3.05(c)(2)(B) and 3.05(c)(3)(A). Trial in this matter, should it prove necessary, is certainly significantly more

¹The United States disputes the history of settlement negotiations described in Quorum's motion, but feels that such negotiations are irrelevant when the issue is that formal mediation is premature. In brief, while it is true that the United States does not have sufficient information to be able to present a settlement *figure*, it articulated detailed, carefully developed suggestions for how to arrive at a mutually agreeable figure without the added burdens of formal litigation, parallel to those being implemented by it and Columbia/HCA (which are described in more detail in the declaration of Vanessa I. Green in support of the United States' Application for a Stay, filed under seal with this Court). Quorum rejected this approach.

than 45 days in the future; even the formal beginning of civil discovery remains more than 45 days in the future. Should Quorum wish to discuss settlement, or narrowing the issues to be litigated, the United States would not be averse to doing so. The United States does not believe however, that it is appropriate formally to refer this case to mediation when the case is still in its early stages, and believes that the Local Rules do not contemplate such a referral.

CONCLUSION

The United States therefore opposes at this time the motion to refer this matter to a mediator under Chapter 9 of the Local Rules, and requests the Court to deny the motion, without prejudice for refileing at a later date in this litigation.

Respectfully submitted,

DAVID W. OGDEN
Acting Assistant Attorney General

CHARLES R. WILSON
United States Attorney

JAY G. TREZEVANT
Assistant United States Attorney
Florida Bar No. 802093
400 N. Tampa Street
Suite 3200
Tampa, Florida 33602
Telephone: 813/ 274-6076
Fax: 813/ 274-6198

Date: February ___, 1999

MICHAEL F. HERTZ
JOYCE R. BRANDA
MARIE V. O'CONNELL
VANESSA I. GREEN
DAVID M. GOSSETT
Attorneys, Civil Division
U.S. Department of Justice
P.O. Box 261
Ben Franklin Station
Washington, D.C. 20044
Telephone: 202/ 616-8132
Fax: 202/ 616-3085